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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. JOSE LUIS VASQUEZ, Defendant and Appellant.	D073820 (Super. Ct. No. SCD272230)

APPEAL from a judgment of the Superior Court of San Diego County, Margie G. Woods and Michael S. Groch, Judges. Affirmed as modified.

Matthew R. Garcia, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

Following the trial court's ruling on a motion to suppress evidence, Jose Luis Vasquez pled guilty to one count of possession for sale of a controlled substance (heroin)

(Health & Saf. Code, § 11351). The trial court imposed and suspended execution of a three-year sentence and placed Vasquez on probation for three years.

Vasquez makes two arguments on appeal. First, Vasquez contends that the trial court erred in ruling on the motion to suppress evidence, so that this matter should accordingly be remanded to allow him to withdraw his guilty plea. We conclude that Vasquez's contention lacks merit. Second, Vasquez contends, and the People agree, that the trial court erred by imposing a drug program fee and a criminal laboratory fee in an amount greater than authorized by the applicable statutes. As the parties agree that excessive fees were imposed, we modify the judgment to reduce the fees to the statutorily authorized amounts. As so modified, we affirm the judgment.

I.

FACTUAL AND PROCEDURAL BACKGROUND

On the morning of May 20, 2017, three probation officers arrived at a three-bedroom house to perform a probation compliance search on a probationer (the Probationer) who had recently confirmed with his probation officer that he lived at that address. The Probationer's conviction was for selling or furnishing a controlled substance. (Health & Saf. Code, § 11379, subd. (a).) Although the search was unannounced, it was executed on a Saturday morning at 10:00 a.m., and the officers had no reason to believe that the Probationer would be away from home.

The probation officers knocked on the front door, which was ajar. A man inside the house first appeared as if he was going to walk away, but he then turned around and came to the front door. The officers announced their purpose for being there, and while

entering the house, they asked if the Probationer was present. The man indicated that the Probationer was not there. The man appeared to know who the officers were referring to as the Probationer, and one officer remembered the man saying that the Probationer had just left the house.[1]

While the man waited in the living room with one of the officers, the other two officers began conducting a protective sweep of the house. As explained by the officers during the suppression hearing, the purpose of a protective sweep is to gather the people who may be spread out throughout the house into a common area for purposes of officer safety during the probation compliance search. As the officers began their protective sweep, a woman came out of one of the bedrooms and then turned to go back into the bedroom, locking the door behind her when one of the officers attempted to communicate with her.

When the officers knocked on the bedroom door that the woman had locked behind her, the woman opened the door and the officers stepped inside. Vasquez was sitting on the bed. As one of the officers attempted to ask Vasquez if he was on probation or parole, Vasquez yelled at the officer, who described Vasquez as "extremely angry" and "combative." The officer was attempting to ascertain Vasquez's identity to determine if he was the Probationer, and was attempting to move Vasquez into the living room. Vasquez indicated that he did not understand English, but he eventually picked up his wallet and threw both the wallet and his identification on a nightstand next to the bed.

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1 The officers later directly confirmed with the residents of the house that the Probationer did reside at the house.

The wallet landed in an open position, and the officer observed a large amount of money inside of it. When the officer looked at the nightstand where the wallet and identification had been thrown, she saw syringes, vials and a scale. Some of the syringes were filled with a black substance consistent with the appearance of heroin, and some of the vials contained a substance that looked like marijuana.[2] Vasquez eventually got up off the bed and complied with being handcuffed and taken into the living room. When Vasquez stood up, the officer saw a sword on the bed. After Vasquez was taken into the living room, one of the officers moved a pillow, under which Vasquez had been placing his hand, and found what appeared to be a handgun.[3] The officer also checked to confirm that no one was hiding in the bedroom closet. While Vasquez was in the living room, another officer entered the bedroom and looked into a backpack to try to determine who resided in the bedroom, where he found a bag containing a green leafy substance.[4] Vasquez later confirmed to the officers that he lived in the bedroom.

Based on what the officers had seen in the bedroom, they called a supervising probation officer to the scene, who made an application for a search warrant. The search warrant was issued, and the officers conducted a search of Vasquez's bedroom, during which they found additional amounts of heroin (totaling 2.2 ounces), over $20,000 in cash, and multiple rounds of ammunition.

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2 The substance located on the nightstand eventually tested positive for heroin.

3 The handgun was later determined to be a replica.

4 Although initially suspected to be marijuana based on appearance and smell, the green leafy substance did not test positive for marijuana.

Vasquez was charged with one count of possession for sale of more than 14.25 grams of a controlled substance (heroin) (Health & Saf. Code, § 11351; Pen. Code, § 1203.07, subd. (a)(1)), and one count of possessing ammunition by a prohibited person (Pen. Code, § 30305, subd. (a)(1)). Following a preliminary hearing, Vasquez filed two separate pretrial motions.

First, Vasquez filed a motion to quash and to traverse the warrant. As a basis for the motion, Vasquez contended that (1) the supervising probation officer who obtained the search warrant made factual misrepresentations to obtain the warrant; and (2) the issuance of the search warrant was not supported by probable cause because the presence of suspected marijuana, money and a replica pistol in Vasquez's room was not a valid basis on which to base a suspicion of criminal activity. After holding a hearing at which one witness testified, the trial court denied the motion, concluding that the totality of the circumstances indicated narcotics sales, and Vasquez had not met his burden to present evidence to establish that the search warrant application contained any false information presented knowingly or recklessly or that the allegedly false information was material.

Second, Vasquez filed a motion to suppress all of the evidence against him obtained during the search on May 20, 2017, including the items located in plain sight during the officers' initial entry into the bedroom and the items subsequently located as a result of the search warrant. Vasquez argued that (1) the officers were not authorized to conduct a probation compliance search of the Probationer's home because they did not adequately verify that the Probationer lived there and would be present; and (2) the

officers were not justified in conducting a protective sweep of the entire house to include Vasquez's bedroom.

The trial court ruled on the motion to suppress with respect to the items that the officers located prior to obtaining the search warrant. Specifically, the trial court ruled that it would suppress the evidence of (1) the replica gun that the officers found underneath a pillow; and (2) the bag of the green leafy substance found inside the backpack. With respect to all of the other items located prior to the issuance of the search warrant, the trial court ruled that those items were admissible because they were located in plain view during the protective sweep of the bedroom. The trial court explained that it was rejecting Vasquez's argument that the officers were not authorized to enter the house to conduct a probation compliance search of the Probationer, and that the officers were not justified in conducting a protective sweep to include Vasquez's bedroom.

The trial court scheduled a hearing for the next day to consider whether in light of the suppression of the contents of the backpack and the replica gun, no probable cause existed to issue the search warrant. Instead of proceeding with the hearing to determine whether the fruits of the search warrant should be suppressed, Vasquez entered a guilty plea to one count of possession for sale of a controlled substance (heroin) (Health & Saf. Code, § 11351). According to the terms of the plea agreement, the trial court imposed a three-year sentence and then suspended execution of the sentence, placing Vasquez on formal probation with the possibility of converting the probation to felony probation to the court after a minimum of six months.

II.

DISCUSSION

A. *The Trial Court Did Not Err in Ruling on the Motion to Suppress Evidence*

Vasquez contends that the trial court erred insofar as it denied the motion to suppress with respect to the items located in plain view in Vasquez's bedroom during the protective sweep.

1. *Applicable Legal Standards*

A defendant may move to suppress evidence on the ground that "[t]he search or seizure without a warrant was unreasonable." (Pen. Code, § 1538.5, subd. (a)(1)(A).) "When a defendant raises a challenge to the legality of a warrantless search or seizure, the People are obligated to produce proof sufficient to show, by a preponderance of the evidence, that the search fell within one of the recognized exceptions to the warrant requirement. [Citations.] A probation search is one of those exceptions. [Citations.] This is because a 'probationer . . . consents to the waiver of his Fourth Amendment rights in exchange for the opportunity to avoid service of a state prison term,' except insofar as a search might be 'undertaken for harassment or . . . for arbitrary or capricious reasons.' (*People v. Bravo* (1987) 43 Cal.3d 600, 608, 610; accord, *People v. Medina* (2007) 158 Cal.App.4th 1571, 1577.)" (*People v. Romeo* (2015) 240 Cal.App.4th 931, 939.) However, a search of a probationer's home "remains limited in scope to the terms articulated in the search clause . . . and to those areas of the residence over which the probationer is believed to exercise complete or joint authority." (*People v. Woods* (1999) 21 Cal.4th 668, 681 (*Woods*), citation omitted.) "Even though a person subject to a

search condition has a severely diminished expectation of privacy over his or her person and property, there is no doubt that those who reside with such a person enjoy measurably greater privacy expectations in the eyes of society. For example, those who live with a probationer maintain normal expectations of privacy over their persons. In addition, they retain valid privacy expectations in residential areas subject to their exclusive access or control, so long as there is no basis for officers to reasonably believe the probationer has authority over those areas." (*People v. Robles* (2000) 23 Cal.4th 789, 798 (*Robles*).) "[U]nless the circumstances are such as to otherwise justify a warrantless search of a room or area under the sole control of a nonprobationer (e.g., exigent circumstances), officers wishing to search such a room or area must obtain a search warrant to do so." (*Woods*, at p. 682.) "One recognized exigent circumstance that will support the warrantless entry of a home—the risk of danger to police or others on the scene—also provides the justification for a 'protective sweep' of a residence." (*People v. Celis* (2004) 33 Cal.4th 667, 676-677 (*Celis*).)

" ' "The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." ' " (*People v. Suff* (2014) 58 Cal.4th 1013, 1053.) "Under California law, issues relating to the suppression of evidence derived from police searches and seizures must be reviewed under federal constitutional standards." (*Robles, supra*, 23 Cal.4th at p. 794.)

2. *The Officers Reasonably Believed That the Probationer Resided at the House*

As his first challenge to the legality of the search, Vasquez contends that the officers lacked sufficient information that the Probationer resided at the house and would be present.

"It is settled that where probation officers or law enforcement officials are justified in conducting a warrantless search of a probationer's residence, they may search a residence *reasonably believed* to be the probationer's." (*People v. Palmquist* (1981) 123 Cal.App.3d 1, 11 (*Palmquist*), italics added.) The inquiry is whether "the facts known to the officers, taken as a whole, gave them *objectively reasonable grounds to believe*" that the probationer lives at the residence. (*People v. Downey* (2011) 198 Cal.App.4th 652, 661 (*Downey*).) As our Supreme Court has pointed out, a probation search is authorized if " 'reasonably related' to a probationary purpose," but no such valid purpose exists "when the officers involved do not even know of a probationer who is sufficiently connected to the residence." (*Robles, supra,* 23 Cal.4th at p. 797.) " '[T]he question of whether police officers reasonably believe an address to be a probationer's residence is one of fact, and we are bound by the finding of the trial court, be it express or implied, if substantial evidence supports it.' " (*Downey*, at p. 658.)

Here, the evidence at the suppression hearing established the officers reasonably believed that the Probationer lived at the house.[5] As one of the officers explained, prior

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[5] Indeed, as we have explained, the officers learned while questioning the residents of the house that Probationer did in fact reside at the house.

to going to the house, he was provided a form by the Probationer's assigned probation officer, which the Probationer had filled out eight days earlier. The form indicated that the house was the Probationer's residence. The officer double checked the address that the Probationer had written on the form by entering the address in a probation department database. The results of the search showed the Probationer's name as a resident at the address entered. Finally, the officer also entered the Probationer's name in two other databases that show recent contacts with law enforcement to ascertain if there was any other relevant information about the Probationer, but nothing significant was found. Further, when the officers arrived at the house and talked to the man at the front door, the man knew who the officers were referring to when they asked for the Probationer and, as one of the officers testified, the man said the Probationer just left. Thus, the officers' interaction with the man at the front door gave the officers no reason to doubt, as the Probationer had indicated when filling out the form eight days earlier, that the Probationer did indeed live at the house. Accordingly, evidence presented at the suppression hearing establishes that the officers had a reasonable belief that the house was the Probationer's current address.

Vasquez relies on *Downey* for the proposition that officers must check multiple sources before reasonably concluding a probationer is sufficiently connected to a particular residence, explaining that the officer in *Downey* had a reasonable belief that the Probationer lived at a particular address because he searched multiple databases and looked at utility records. (*Downey*, *supra*, 198 Cal.App.4th at p. 655.) However, *Downey* is inapposite because the probationer in that case had not given a valid address,

requiring the officer to search various sources to come up with several viable addresses and then to narrow the possibilities down to the most probable location. (*Ibid*.) Here, in contrast, the Probationer provided a valid residence address to his probation officer only eight days before the search. The officers acted reasonably in forming a belief that the Probationer resided at the house that was searched, based on (1) the Probationer's own representation; (2) the officers' check of other databases; and (3) the officers' conversation with the man at the front door of the house. Nothing more was reasonably required.

Vasquez also contends that the probation search was not lawful because the officers had no reasonable belief that the Probationer was present in the house at the time of the search, even if it was his residence. For this argument, Vasquez relies on *Downey*'s statement that "an officer executing an arrest warrant or conducting a probation or parole search may enter a dwelling if he or she has only a 'reasonable belief,' falling short of probable cause to believe, the suspect lives there *and is present at the time*." (*Downey, supra,* 198 Cal.App.4th at p. 662, italics added.) We reject the argument for two reasons.

First, as the trial court pointed out in its ruling, although the search was unannounced, the officers did take reasonable steps to conduct the search at a time when they believed the Probationer was likely to be home, as the search was conducted on a Saturday at 10:00 a.m., when it is more likely that someone will be at home rather than at work or school. Further, as one officer testified, he had no information indicating that the Probationer had been ordered to participate in any type of outpatient program or had any specific employment that would have meant he would not be at home during the search.

Second, we do not understand *Downey* to be establishing a rule that in all cases a probation search of a probationer's residence may only be conducted while the probationer is present in the residence. The question presented in *Downey* was whether an officer's belief that the probationer resided at a particular address was to be assessed under a probable cause standard or a reasonable belief standard. Relying on case law developed in the situation of entry into a residence pursuant to an *arrest warrant*, *Downey* concluded that only a *reasonable belief* regarding the probationer's residence was required. In the course of its analysis, *Downey* relied on the Supreme Court's holding in *Payton v. New York* (1980) 445 U.S. 573, 603, that *an arrest warrant* "gives law enforcement officers 'the limited authority to enter a dwelling in which the suspect lives when there is *reason to believe* the suspect is within.' " (*Downey, supra,* 198 Cal.App.4th at p. 660, italics added.) *Downey* explained that "the majority of circuits have interpreted *Payton* to mean that officers entering a residence to execute an arrest warrant must have a '*reasonable belief*' that the targeted suspect: (1) lives at that residence, and (2) is within the residence at the time of their entry." (*Id.* at p. 661, italics added.) Accordingly, concluding that the situation of the entry into a house to execute an arrest warrant was similar to the entry into a house to conduct a probation search, *Downey* rejected the argument that a probable cause requirement applied when officers determined whether a probationer resided at a specific address for the purpose of a probation search. In that context, as the execution of an arrest warrant requires the belief that the subject of the warrant is present in the home, *Downey* made the statement that "an officer *executing an arrest warrant* or conducting a probation or parole search may

enter a dwelling if he or she has only a 'reasonable belief,' falling short of probable cause to believe, the suspect lives there *and is present at the time*." (*Downey*, *supra*, 198 Cal.App.4th at p. 662, italics added.)

Despite this statement, based on the facts and disposition in *Downey* we do not understand *Downey* to have adopted the rule that a lawful probation search of a probationer's residence requires the presence of the probationer at the residence during the search. As the factual recitation in *Downey* establishes, the officers entered the residence to conduct a search, but they discovered that *the probationer was not present*. (*Downey*, *supra*, 198 Cal.App.4th at p. 656.) Nevertheless, the officers located utility bills confirming that the probationer resided at the address. (*Ibid*.) The officers proceeded to conduct a search of the probationer's residence in his absence and located evidence in common areas of the residence that incriminated the defendant. (*Ibid*.) *Downey* held that the search *was lawful* (even though the probationer was absent), and it affirmed the denial of the defendant's motion to suppress the evidence found in the common areas of the residence. (*Id*. at p. 662.) If *Downey* meant to create the rule that a search of the probationer's residence is lawful only if the officers reasonably believe the probationer is present, it would not have affirmed the denial of the suppression motion. Therefore, we do not understand *Downey* as intending to add a *presence* requirement to the already-established rule that "where probation officers or law enforcement officials are justified in conducting a warrantless search of a probationer's residence, they may search a residence reasonably believed to be the probationer's." (*Palmquist, supra,* 123 Cal.App.3d at p. 11.)

In sum, we conclude that the trial court properly concluded that the officers lawfully entered the Probationer's house to conduct a probation search. Accordingly, the items that the officers located in plain view after they entered the house were not required to be suppressed on the ground that the probation search was unlawful.

3. *It Was Lawful for the Officers to Conduct a Protective Sweep to Include Vasquez's Bedroom*

Vasquez also argues that the items located in plain view by the officers in his bedroom should have been suppressed because the officers improperly performed a protective sweep of the house to include his bedroom.

As we have explained, in conducting a probation search, officers may search only those "areas of the residence over which the probationer is believed to exercise complete or joint authority." (*Woods*, *supra*, 21 Cal.4th at p. 681.) However, when circumstances warrant, officers may conduct a preliminary protective sweep of the entire residence for safety purposes, which may include areas of the residence under the exclusive control of other occupants. (*People v. Ledesma* (2003) 106 Cal.App.4th 857, 864 (*Ledesma*).) Specifically, "[a] 'protective sweep' is a quick and limited search of premises . . . conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding." (*Maryland v. Buie* (1990) 494 U.S. 325, 327.) When conducting a search inside a home, officers have an interest "in taking steps to assure themselves that the house . . . is not harboring other persons who are dangerous and who could unexpectedly launch an attack." (*Id*. at p. 333.) A protective sweep is lawfully undertaken when "the searching officer

'possesse[d] a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant[ed]" the officer in believing,' . . . that the area swept harbored an individual posing a danger to the officer or others." (*Id.* at p. 327) "A protective sweep can be justified merely by a *reasonable suspicion* that the area to be swept harbors a dangerous person," but it "may not be based on 'a mere "inchoate and unparticularized suspicion or 'hunch.' " ' " (*Celis, supra*, 33 Cal.4th at p. 678.) "[I]n determining the existence of reasonable suspicion, courts must evaluate the ' "totality of the circumstances" ' on a case-by-case basis to see whether the officer has ' "a particularized and *objective* basis" ' for his or her suspicion." (*Ledesma*, at p. 863, italics added.) In doing so, it is important to allow officers on the scene " 'to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person." ' " (*Ibid.*)

Here, both of the officers who testified at the suppression hearing explained that the situation the officers encountered in the house when they arrived to conduct the probation search gave rise to a concern for officer safety. Specifically, the house had three bedrooms, and shortly after the officers arrived, a woman came out of one of the bedrooms. Although an officer attempted to speak with the woman, she turned around and went back into the bedroom, locking the door behind her. As one of the officers explained, he did not know what was happening behind the locked bedroom door, and he wanted to assess whether there was a threat to the safety of the officers from the person or persons in the bedroom. Once the officers gained entry to the bedroom to investigate

whether there was a dangerous situation behind the locked bedroom door, the officers were justified in staying in the bedroom until they were able to neutralize Vasquez's combative and angry behavior by taking him into the living room so that they could conduct the probation search without further threat from him.

Moreover, as the trial court observed in ruling on the suppression motion, there were other facts that created a reasonable concern for officer safety. First, in addition to the suspicious and uncooperative actions of the woman who locked herself in the bedroom, the officers observed that the man who eventually came to the front door was reluctant to cooperate with the officers. He initially attempted to walk away from the officers, but when the officers verbally contacted him, "he stopped and he complied with [their] request." The officers could reasonably view this behavior as an indication of a possible dangerous situation in the house. Second, the Probationer had been convicted of selling or furnishing a controlled substance. "[T]he type of criminal conduct underlying the arrest or search is significant in determining if a protective sweep is justified." (*Ledesma, supra,* 106 Cal.App.4th at p. 865.) Moreover, as noted in the search warrant, the area in which the house is located is known for high narcotics activity. "Firearms are, of course, one of the ' "tools of the trade" ' of the narcotics business." (*Ibid*.) Thus, the officers were justified in suspecting that there could possibly be persons with dangerous firearms in the house due to the fact that both the Probationer and the neighborhood had a connection to drug activity.

Pointing to several statements made by the officers during the suppression hearing, Vasquez argues that the officers did not conduct the protective sweep because of officer

safety concerns but as a pretext to look for evidence of crimes by other residents of the house. Vasquez points out that one of the officers testified that, in general, one purpose of a protective sweep is "to find any contraband that might be out in plain sight." Vasquez also contends that the officers did not have a genuine concern for officer safety because they did not search under the bed in Vasquez's bedroom to see if anyone was hiding there. However, we reject these arguments because they improperly focus on the officer's subjective intent. "In the context of probation searches, . . . the question is whether the circumstances, viewed *objectively*, show a proper probationary justification for an officer's search; if they do, then the officer's subjective motivations with respect to a third party resident do not render the search invalid." (*Robles, supra*, 23 Cal.4th at p. 796, italics added.) The proper inquiry focuses objectively on whether the facts "would warrant *a reasonably prudent officer* to entertain a reasonable suspicion that the area to be swept harbors a person posing a danger to officer safety." (*Celis, supra*, at pp. 679-680, italics added.) Here, as we have explained, the totality of the circumstances objectively supported the need for a protective sweep because the officers could reasonably believe that dangerous persons might be present in the house.

In sum, we conclude that under the totality of the circumstances, the protective sweep of the house was lawful. Accordingly, the trial court properly denied the motion to suppress the evidence of items located in plain view during the protective sweep.[6]

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6 In this appeal, Vasquez does not challenge the trial court's ruling denying his motion to quash and traverse the search warrant, which was based primarily on his contention that the search warrant application contained factual misrepresentations.

B. *The Drug Program Fee and the Criminal Laboratory Analysis Fee Were In Excess of the Statutorily Permitted Amounts*

At sentencing, Vasquez was ordered to pay a criminal laboratory analysis fee of $205 pursuant to Health and Safety Code section 11372.5. He was also ordered to pay a drug program fee of $615 pursuant to Health and Safety Code section 11372.7.

As Vasquez points out, however, those fees are in excess of the amounts authorized by statute. The criminal laboratory analysis fee imposed under Health and Safety Code section 11372.5 is supposed to be in the amount of $50 per conviction.[7] The drug program fee imposed under Health and Safety Code section 11372.7 must not exceed $150 for each separate offense.[8] The People agree that the fees were in excess of the amounts authorized and that we should correct them.

Because Vasquez was convicted of only one offense, the criminal laboratory analysis fee should have been in the amount of $50, and the drug program fee should

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However, in the course of his appeal of the trial court's ruling on the motion to suppress, Vasquez revisits some of the factual arguments that he made in his motion to quash and traverse the search warrant, contending that the supervising probation officer made misrepresentations in the search warrant application. We do not address those arguments here because they are not relevant to our analysis of the trial court's ruling on the motion to suppress.

7 As relevant here, the statute provides, "(a) Every person who is convicted of a violation of Section . . . 11351 . . . of this code . . . shall pay a criminal laboratory analysis fee in the amount of fifty dollars ($50) for each separate offense." (Health & Saf. Code, § 11372.5, subd. (a).)

8 The statute provides, "Except as otherwise provided in subdivision (b) or (e), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars ($150) for each separate offense." (Health & Saf. Code, § 11372.7, subd. (a).)

have been in the amount of $150. We therefore order that the judgment be modified to reflect the proper amount of fees.

DISPOSITION

The judgment is modified as follows: The criminal laboratory analysis fee imposed under Health and Safety Code section 11372.5 is reduced to the amount of $50. The drug program fee imposed under Health and Safety Code section 11372.7 is reduced to $150. As so modified, the judgment is affirmed.

IRION, J.

WE CONCUR:

HUFFMAN, Acting P. J.

GUERRERO, J.